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IN THE

SUPREME COURT OF THE UNITED STATES.

(7)

OCTOBER TERM, 1954.

LLOYD WEBER, RUSSELL DAVIS, WALTER PATRICK, THOMAS BLAKE, ALBERT MELTON, WINFIELD SCOTT MUSLER, ROBERT HAMMER, WILBERT A. REED, BERNARD SIEMER, and THOMAS MULVANEY, Individually and as Representatives of the INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 9, Petitioners,

vs.

ANHEUSER-BUSCH, INC., a Corporation, Respondent.

No. 97.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI.

BRIEF FOR PETITIONERS.

PLATO E. PAPPS,
Machinists Building,
Washington 1, D. C.,
ROBERT A. ROESSEL,
818 Olive Street,
St. Louis 1, Missouri,
Counsel for Petitioners.

Of Counsel:
ROESSEL, BOXDORFER & BROWNELL,
818 Olive Street,
St. Louis 1, Missouri.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 1-4477.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1954.

LLOYD WEBER, RUSSELL DAVIS, WALTER PATRICK, THOMAS BLAKE, ALBERT MELTON, WINFIELD SCOTT MUSLER, ROBERT HAMMER, WILBERT A. REED, BERNARD SIEMER, and THOMAS MULVANEY, Individually and as Representatives of the INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 9, Petitioners, vs. ANHEUSER-BUSCH, INC., a Corporation, Respondent.	No. 97.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI.

BRIEF FOR PETITIONERS.

I.

OPINION OF THE SUPREME COURT OF MISSOURI.

The opinion of the Supreme Court of Missouri is reported as Anheuser-Busch, Inc., v. Lloyd Weber et al., 265 S. W. (2nd) 325, ... Mo. ... (not yet officially reported),

and is dated February 8, 1954. It is herein set out (R. pp. 104-119).

The motion for a rehearing (R. pp. 120-123) was overruled on March 8, 1954 (R. p. 123). Per Curiam Opinion was filed on March 8, 1954 (R. pp. 124-126), and Stay of Mandate was ordered on March 12, 1954 (R. p. 127).

II.

JURISDICTION.

The Jurisdiction of this Court is invoked under Title 28, U. S. C. A., Section 1257 (3) (June 25, 1948, c. 646, 62 Stat. 929). There are two substantial Federal questions involved: (1) the intrusion by the State of Missouri into a labor dispute in an industry affecting interstate commerce, a subject pre-empted by Congress and over which the National Labor Relations Board has exclusive jurisdiction; (2) the question of the supremacy of the Federal law under Article VI of the Constitution of the United States.

These questions were raised in the first instance in the trial court by petitioners' "Separate Motion to Dismiss for Want of Jurisdiction . . ." (R. p. 11); again in their "Return to the Order to Show Cause and Answer" (R. pp. 13, 105), followed also in their "Motion for a New Trial" (R. p. 87), and raised in their "Motion to Modify" the decree of the trial court (R. p. 83), and in their "Motion to Set Aside the Finding and Decree Herein and to Dismiss Plaintiff's Complaint for Want of Jurisdiction" (R. p. 85).

These questions were briefed and argued in the Supreme Court of Missouri (R. pp. 104-114) (Opinion of the Missouri Supreme Court).

III.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED.

The National Labor Relations Act, as amended, and the Labor Management Relations Act (1947), Title 29, U. S. C. A., Secs. 141-187, c. 120. Reference is here made to the sections of the Act and the U. S. C. section is indicated in parentheses.

Statement of Policy, Sec. 1 (b) (U. S. C., Sec. 141); Title I, Amendments, Sec. 101, Findings and Policies, Sec. 1 (last par. U. S. C., Sec. 151).

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Rights of Employees, Sec. 7 (U. S. C., Sec. 157).

Unfair Labor Practices, Sec. 8 (b) 4, 4A, 4B, 4D (U. S. C., Sec. 158 (b) 4, 4A, 4B, 4D).

Title III, Suits by and against Labor Organizations, Boycotts, and Other Unlawful Combinations, Sec. 303 (a), 1, 2, 4 (U. S. C., Sec. 187 (a) 1, 2, 4).

Title I, Exclusive Right of Majority Representative, Sec. 9 (a) (U. S. C., Sec. 159 (a)).

Prevention of Unfair Labor Practices, Power of the Board, Sec. 10 (a) (U. S. C., Sec. 160 (a)).

Power of Board to Petition Courts for Temporary Injunction, Sec. 10 (j) (U. S. C., Sec. 160 (j)).

Determination of Jurisdictional Disputes by Board, Sec. 10 (k) (U. S. C., Sec. 160 (k)).

Duty of Board to Seek Injunctive Relief Against Certain Strikes and Boycotts, Sec. 10 (l) (U. S. C., Sec. 160 (l)).

United States Constitution, Article VI.

The foregoing citations are set out verbatim in Appendix A.

IV.

THE QUESTION.

The question presented is whether the State Court of Missouri, under the facts in this case, has the competence to assume jurisdiction in a labor dispute in an industry affecting interstate commerce where such jurisdiction is in conflict with and intrudes upon the National labor relations policy and statutory scheme.

V.

STATEMENT OF THE CASE.

This is a labor case arising out of a dispute or controversy between parties in an industry admittedly in interstate commerce within the meaning of the Act (R. p. 22), involving the retention in a collective bargaining contract of a certain clause of a prior negotiated contract. The question of the exclusive jurisdiction of the National Labor Relations Board is squarely presented.

Respondent, Anheuser-Busch, Inc. (plaintiff below), is admittedly engaged in interstate commerce (R. p. 22) in the business of ". . . manufacturing and selling beer, yeast . . . and other commodities," with its principal place of business in the City of St. Louis, Mo. It employs approximately 6,000 persons in its St. Louis plant (R. p. 22) of whom about 220 are members of the International

Association of Machinists, District No. 9, petitioners herein (defendants below) (R. p. 104).

Petitioners have for approximately 25 years been recognized by respondent as the exclusive bargaining representative of respondent's employees in its St. Louis plant who are employed as machinists (R. p. 24). Petitioners were certified as such exclusive bargaining representative by the National Labor Relations Board (hereinafter referred to as the N. L. R. B. or the Board) on March 25, 1948 (R. p. 25).

In 1951 petitioners gave due and timely notice under the Labor Management Relations Act, 1947 (hereinafter referred to as the L. M. R. A., 1947), and likewise under the provisions of the then existing contract between the parties of their desire to amend and modify the said contract in certain particulars (R. pp. 15, 69). The respondent gave no notice of its desire to terminate the contract or to modify it.

Negotiations between the parties began on December 19, 1951 (R. p. 5). The respondent then insisted on the deletion of Section 2 of Article VII of the said contract.[1] On

[1] The said Article VII in its entirety is as follows:

"Article VII, Section 1. Jurisdiction: The employer agrees that all turning, boring, fitting, filing, planing, shaping, babbitting, chipping, sawing and machinery repairing on gasoline, diesel and electric trucks and automobiles in the plant and the making, assembling, erecting and repairing of all machinery of all descriptions and parts thereof performed within the employer's plant by the employer shall be performed by employees within the bargaining unit as set forth in Section 1 of Article 1 of this agreement, either under its own supervision or such other supervision as the employer shall select."

"Section 2: In the event it becomes necessary to have such work hereinbefore described contracted out, the employer shall let out such work to and select contractors who have with the International Association of Machinists collective bargaining agreements which contain provisions corresponding to or consistent with the aforesaid jurisdictional limitations" (R. p. 4).

March 24, 1952, petitioners filed their unfair labor practice charge against the respondent with the N. L. R. B. alleging refusal on the part of the respondent to bargain in good faith. (Said charge was amended on April 18, 1952.) (R. p. 70.) The Regional Director for the 14th Region of the Board refused to issue a complaint, which refusal, on appeal, was sustained by the General Counsel of the Board. (See Administrative Decisions of General Counsel, N. L. R. B. case No. 766, August 17, 1953, par. 12,776, CCH Labor Law Service.) After negotiations broke off because of respondent's insistence on the deletion of the said Section 2 of Article VII, and after the Federal Mediation and Conciliation Service was notified, a strike vote was taken on April 6, 1952, the vote being 206 to 14 in favor of a strike. Petitioners, on April 7, 1952, struck and peacefully picketed the premises of the respondent (R. p. 6). The said picketing was peaceful in all respects (R. pp. 16; 44-47; 48-51; 51-54; 54-55; 70, 110).

On April 8, 1952, respondent filed with the Board (14th Region, St. Louis) unfair labor practice charges against the petitioners alleging that petitioners were violating Section 8 (b) (4) (D) of the N. L. R. A., as amended[2] ". . . with the object and purpose of forcing and requiring Anheuser-Busch, Inc., and those contracting with it for the purpose of performing construction work, to assign and cause to be assigned, particular work to employees who are members of and represented by other labor organizations . . .". A notice of hearing was issued by the N. L. R. B. in accordance with Section 10 (k) of the Act, and after the hearing of said alleged charge on July 8, 1952, the Board on November 18, 1952, quashed said notice of hearing, sustaining petitioners' motion ". . .

---

[2] Section 8 (b) (4) (D) and other pertinent sections as well as pertinent sections of the L. M. R. A. (1947) of the Act appear in Appendix A.

to quash the notice of hearing on the ground that the evidence did not establish a violation of Section 8 (b) (4) (D) as alleged in said charge" (101 N. L. R. B., p. 346, No. 87).

Contemporaneously with the filing of its unfair labor practice charge, and on April 19, 1952, respondent filed its petition and complaint in the Circuit Court of the City of St. Louis, Missouri (R. p. 2), and its amendment by interlineation on April 30, 1952, alleging violation of the Missouri Restraint of Trade (Conspiracy) Statute [R. p. 8, par. 15 (a), respondent's complaint]. The complaint sought to enjoin petitioners from picketing the premises of the respondent in the City of St. Louis (R. p. 2 etc.). The strike and picketing resulted from unsuccessful negotiations directly between the primary parties and was based solely, as stated above, on respondent's insistence on the deletion of the said clause (Section 2, Article VII) which appeared in the prior contract between the parties.

For some time there had been a dispute between petitioners and the Millwrights A. F. L. (Carpenters' Union) as to which Union should perform certain work. To protect the work contended for by petitioners, Section 2 of Article VII was inserted in the contract after lawful negotiation and consultation.

The object and purpose of the picketing had to do with the terms and conditions of employment of petitioners concerning the protection and assurance of the work contended for by the petitioners.

On April 19, 1952, and prior to the amendment by interlineation on April 30, 1952, alleging the violation of the Missouri Restraint of Trade Statute, the trial court on the same date, to-wit, April 19, 1952, without notice or hearing, *ex parte*, issued its restraining order and injunction, enjoining petitioners from any and all picketing, which injunction

was made final (R. p. 83) and affirmed by the Supreme Court of Missouri (R. pp. 104, 119).

In its original complaint to the State Court respondent charged that petitioners' strike and picketing was for the purpose of furthering a jurisdictional dispute between the petitioners and the Millwrights (A. F. L.), and constituted a secondary boycott, and as such was violative of certain sections of the N. L. R. A., as amended, and of the L. M. R. A. 1947, to-wit:

> (Par. 9) ". . . and therefore constitutes, as to plaintiff, a secondary boycott, and is in violation of Section 8 (b) (4) (A) and (B) of the National Labor Relations Act, as amended, and Section 303 (a) (1) and (2) of the Labor Management Relations Act 1947, and is an attempt by the Machinists, using coercion on plaintiff, to illegally establish the Machinists as bargaining representative for other employees of other employers for whom the said Machinists have not been certified as bargaining representative by the National Labor Relations Board; and also an attempt to coerce other employers beyond the control of plaintiff to award such work to said Machinists and to unlawfully extend the bargaining rights of said Machinists" (Par. 9, Resp's Complaint, R. pp. 6-7).
>
> (Par. 10) ". . . and therefore constitutes a jurisdictional dispute and is in violation of Section 8 (b) (4) (D) of the National Labor Relations Act, as amended, and Section 303 (a) (4) of the Labor Management Relations Act, 1947" (Par. 10, Resp's Complaint, R. p. 7).
>
> (Par. 15) "Said conduct and activity referred to in Paragraph 14 constitutes a secondary boycott under the common law of the State of Missouri, **and in addition**, is in violation of Section 8 (b) (4) (A) of the

National Labor Relations Act, as amended, and Section 303 (a) (1) of the Labor Management Relations Act 1947." (Emphasis ours.) (Par. 15, Resp's Complaint, R. p. 8.)

By the aforesaid amendment of April 30, 1952, and after the issuance by the trial court of the "ex parte" injunction respondent, for the first time, alleged that petitioner's conduct was also violative of the Missouri Restraint of Trade Statute, R. S. 1949, Sec. 416.010, having to do with combinations in restraint of trade (R. p. 8, Par. 15a, Resp's Complaint).

On the 30th day of April, 1952, respondent's cause was removed by petitioners to the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri on the grounds that the state court had no jurisdiction in the matter. The said cause was subsequently remanded by said Court on the 6th day of June, 1952, because the said United States District Court had no power to grant relief.

In due course, on the 10th day of June, 1952, petitioners filed in the State Court their "Separate Motion to Dismiss for Want of Jurisdiction and Failure to State a Cause of Action," and also filed their "Separate Return to the Order to Show Cause and Answer of Defendants" (Petitioners) (R. pp. 11-17).

On the 26th day of June, 1952 (R. p. 19), this matter was heard by the trial court, and on the 3rd day of October, 1952, the trial court overruled the petitioners' (defendant's) Separate Motion to Dismiss for Want of Jurisdiction and Failure to State a Cause of Action, and on said day entered its decree, finding for the respondent and against petitioners, granting respondent a permanent injunction (R. pp. 72-82; 83).

From the finding and decree of the trial court, petitioners appealed to the Supreme Court of Missouri, which Court on the 8th day of February, 1954, entered its decision and judgment affirming the finding and decree of the trial court. Motion for rehearing was overruled by the Supreme Court of Missouri by per curiam opinion on the 8th day of March, 1954 (R. p. 124), and Stay of Mandate was granted on the 12th day of March, 1954, for an indefinite time, i. e., until the ruling by this Court on the petition for a Writ of Certiorari (R. p. 127).

The said petition for issuance of a Writ of Certiorari by this Court, directed to the Supreme Court of Missouri, was granted by this Court on October 14, 1954 (R. p. 128).

VI.

SUMMARY OF ARGUMENT.

A state court has no authority or power to restrain peaceful concerted activity in an industry affecting interstate commerce where such activity is protected or proscribed by the N. L. R. A., as amended, and by the L. M. R. A. (1947). The lawfulness or unlawfulness of the petitioners' activity is for the National Labor Relations Board to determine in the first instance. It is not for a state court to usurp this right by substituting for the Board its own judgment as to what is lawful or not lawful under Federal law. The lack of authority of the state court is not dependent upon a judicial determination in these proceedings that the petitioners were engaged in a "protected" activity, but flows from the possible presence of such protected rights and the correlative prohibitions which are within the exclusive province of the N. L. R. B. to investigate and decide.

The respondent can find no justification for state jurisdiction by merely alleging a conclusionary assertion that petitioners are violating a state "Restraint of Trade" Statute. This case by no means can be said to be taken completely from out the competence of the Federal Act, machinery and statutory scheme. The respondent recognized the Federal authority when it pleaded its case by alleging the acts of petitioners as being unfair labor practices under the Federal Act, and specifically and meticulously set them forth. The power in the first instance to determine this fact must rest with the Federal Board and not the state court.

If it can be said by a last minute, self-serving assertion, a state Restraint of Trade Statute has been violated, and for that reason the case is not within the Federal juris-

diction and statutory scheme, then it is clear that no exclusive Federal authority in this field can be maintained. In any event there is no evidence at bar which factually shows any restraint of trade, let alone a substantial restraint, which the law requires. The whole plan of respondent in this case was and is to seek to avoid federal jurisdiction by means which should not be tolerated.

The traditional and recognized right of a state to assert jurisdiction under its police power is not here in issue, nor is such ground claimed by respondent. The picketing in all respects was orderly and peaceful (R. pp. 16, 44-47, 48-51, 51-54, 54-55, 70, 110).

The Garner (346 U. S. 485) and the Kinard (346 U. S. 933) cases are controlling.

The National labor relations policy as declared by Congress and as reflected in the legislative history of the Act fully sustains petitioners' contention that the state court had no jurisdiction in this labor dispute.

VII.

ARGUMENT.

1. The Supreme Court of Missouri Is in Error in Holding That the Cases of Garner et al. v. Teamsters Union et al., 346 U. S. 485, 98 L. Ed. 161; Building Trades Council et al. v. Kinard Construction Company, 346 U. S. 933, 98 L. Ed. 236 (Decided January 18, 1954, No. 48), Are Not Applicable and Controlling in This Case.

As we read the Garner case we deem it dispositive of the instant matter, especially if the spirit and intent of that case and **the principle** it announces is followed and no strained or unnatural construction is given it. We think the Supreme Court of Missouri did just that, apparently seeking to evade the impact of the Federal law and to usurp for itself control and regulation which we believe cannot be permitted.

The Missouri Court seeks to brush aside and to ignore this Court's holding in the Garner case by stating: "In the Garner case . . . (and others cited by petitioner) . . . unfair labor practices were squarely in issue, and jurisdiction in those cases was in the National Labor Relations Board under par. 160 (a) of the L. M. R. A. 1947" (R. 117), thus inferring that there were no unfair labor practices in the case at bar and hence the Garner case cannot control! Yet we say that there can be no more definite and certain allegation of unfair labor practices than respondent has made in this case and has squarely put in issue and by which it is bound. Therefore, under the facts, it is indeed a strained reasoning by the Missouri Court that no unfair labor practice exists in the instant matter because, says the Missouri Court, the opinion of the N. L. R. B. in respondent's unfair labor practice charge case so states. **This we flatly deny.**

It must be remembered that the N. L. R. B. has the **primary and exclusive** right to determine in the first instance the existence of a labor dispute, its materiality, and whether there is an unfair labor practice under the Federal law. This is elementary. No state court has a right to decide these factors for itself—one way or another, as the Missouri Court seeks to do.

The Board exercised its exclusive jurisdiction when invoked by respondent. The Board then had the unquestioned right to decide the matter. It quashed the notice of hearing on the Union's motion, which in effect dismissed the charge. Decision by the Board does not create or destroy jurisdiction. This Court, in **Bethlehem Steel Company v. N. Y. State Labor Board**, 330 U. S. 767, l. c. 775, has appropriately held:

> "The power to decide a matter can hardly be made dependent on the way it is decided."

The Board **did not decide** that it had no jurisdiction but rather that under the evidence presented there was no basis for respondent's charge, that there was no **present** demand for assignment of work such as is contemplated by Section 8 (b) (4) (D) of the Amended Act. A reading of the Board's decision, **101 N. L. R. B. 346 (No. 87)**, demonstrates clearly that there is no foundation in fact for the Missouri Court's conclusion and holding. There are **other sections** of the Federal law also alleged by respondent to have been violated by petitioner, which the Board has had no opportunity to determine or even to consider. The gravamen of respondent's complaint, as its petition shows, and particularly Pars. 3, 9, 10 and 15 (R. pp. 3, 6, 7, 8), is that the whole controversy is based on a jurisdictional dispute of long standing with the Millwrights (Carpenters). This question is clearly for the determination of the N. L. R. B. on a proper presentation to it. [N. L. R. B. as amended, Sec. 8 (b) (4) (D); Sec. 303 (a) (4), L. M. R. A. 1947.] (See Appendix A.)

This Court squarely held, in the Garner case, **the principle** for which we maintain, when it stated:

> "Congress has taken in hand this particular type of grievance when it affects interstate commerce" (346 U. S. 485, l. c. 488).
>
> " . . . The power and duty of primary decision lies with the Board, not with us. But it is clear that the Board was vested with power to entertain petitioners' grievance, to issue its own complaint against respondents and, pending final hearing, to seek from the U. S. District Court an injunction to prevent irreparable injury to petitioners while their case was being considered" (346 U. S., l. c. 489).

The question propounded by this Court, and applicable here, is:

> " . . . whether the State, through its courts, may adjudge the same controversy and extend its own form of relief?" (346 U. S., l. c. 489).[3]

We aver that the nature or character of the particular state law, which is invoked to sustain state jurisdiction, is of no moment except to maintain and preserve the public peace from violence.

Certainly there is nothing sacrosanct about a state "Restraint of Trade Statute" which gives it dominance or precedence over Federal authority or power, any more than a state labor law. Both must yield if the power of Congress is to be recognized and given effect in the field of labor relations in interstate commerce.

Prof. Archibald Cox of Harvard University Law School, in his recent article, "Federalism in Labor Law" (Harvard

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[3] Also see:

La Crosse Telephone Corp. v. W. E. R. B., 336 U. S. 18, 93 L. Ed. 463, 69 S. C. 379;

Amalgamated Assoc. of Motor Coach Employees, etc., v. W. E. R. B., 340 U. S. 383, 95 L. Ed. 364, 71 S. C. 359.

Law Review, Vol. 67, No. 8, pp. 1307-1333, June, 1954), discusses the instant problems and in fact this very case, and makes some observations in which we believe this Court will be interested.

We contend, of course, that the instant "subject" or "object" of the strike here involved is a proper one for the exercise of employees' concerted activities. At least its propriety is to be determined in the first instance by the Federal authority.

Certainly the **national policy** is to encourage the negotiated adjustment of differences between labor and management. To permit the forty-eight states to assert jurisdiction and to determine **in the first instance** what is and what is not such a proper "subject" or "object" of protected or unprotected concerted activity at the very least interferes with, if it does not actually destroy, the national policy.

The "subject" or "object" must be clearly distinguished from the "means or methods or conduct" used and employed. These latter, as in the Briggs-Stratton case, International Union v. Wisconsin Employment Relations Board, 336 U. S. 245, were held by this Court to be a proper subject of state authority. The Briggs-Stratton case involved a series of twenty-six unannounced "meetings." In reality it was not a strike at all but a "method or means" rather than a "subject or object" employed by a union to obtain its end, however legal that end may be. It was, as the union described it, a "new technique" in labor-management relations.

At l. c. 254 of the Briggs-Stratton case, supra, this Court said:

> "There is no existing or possible conflict or overlapping between the authority of the Federal or State Boards, because the Federal Board has no authority,

either to investigate, approve or forbid the Union **conduct** in question. This **conduct** is governable by the State or it is entirely ungoverned." (Emphasis ours.)

Prof. Cox in his article, discussing International Union v. O'Brien, 339 U. S. 454, l. c. 456, 457—a case involving the Michigan strike control law and its application to peaceful strikes for higher wages—stated:

> "The same or parallel reasoning is applicable **to any peaceful strike arising out of a grievance or contract negotiations. With small modifications it could be invoked in the case of strikes for other objectives.**" (Emphasis ours.) (Cox article, l. c. 1310.)

We assert that the case at bar presents a question as to whether or not the union has a right to negotiate and discuss the matter of the **retention** in a contract of a clause which had already been negotiated and decided upon and appeared in the existing contract, and to this end to insist on such **retention** by engaging in concerted activities protected by Section 7 of the Act. For, as Prof. Cox stated in discussing the O'Brien case:

> "The implied conclusion that Congress has removed all 'concerted activities' from control by the states is confirmed by the closing paragraph of the opinion, in which Mr. Chief Justice Vinson answered the contention of the state authorities that their action was sustained by the Briggs-Stratton case. **'Clearly we reaffirmed the principle that if Congress has protected the Union conduct which the state has forbidden—the State legislation must yield.'** That principle is controlling here." (Emphasis ours.) (Cox's article, supra, l. c. 1310.)

It is our purpose to squarely meet the issues and not to avoid or evade any. We believe we have done so. Prof.

Cox makes specific reference, at l. c. 1329-1331 of his article, supra, to anti-trust laws. For the Court's convenience we here set forth the author's observations in this regard. At l. c. 1329, commenting on anti-trust laws, he observes:

> " . . . Since the antitrust laws are statutes of general application directed primarily toward the preservation of free competition in product markets, there is considerable plausiblity to the argument that enforcement is permissible because the law does not intrude upon the field of labor-management relations. In **Anheuser-Busch, Inc., v. Weber**, the company sought an injunction against picketing by the International Association of Machinists which was an outgrowth of the ancient jurisdictional dispute with the Millwrights' Union. In this instance IAM sought to extend its jurisdiction by inducing the company to include (retain) in a collective agreement covering several hundred machinists employed in the brewery a provision binding the company to let contracts involving plant expansion only to contractors who had collective bargaining agreements with IAM. The Missouri court enjoined the picketing on the ground that the concerted activities were 'not a labor dispute or an unfair labor practice, but . . . coercive tactics restraining freedom of trade, an internal affair over which this state has "traditionally exercised control."' " (Parenthesis ours.)

Prof. Cox measures the instant case and the holding of the Missouri Court in the light of the Garner case and reaches conclusions consistent with ours and which we have continuously asserted:

> "The decision seems inconsistent with the **Garner** case and contrary to the requirements of sound labor policy. Every effective strike aimed at spreading

union organization or achieving conventional economic demands results in **some** restraint of trade because it excludes the employer from the market until he yields. Unless the purpose or effect is to fix market price to the detriment of the consumer, the legality of such a restraint depends upon a test of 'reasonableness.' To say that the statute condemns only 'unlawful' combinations turns the inquiry back into the common law analysis discussed above; it results, therefore, in a decision of labor policy. To judge the reasonableness of the restraint directly involves appraising the union's justification in terms of the effect on union organization and collective bargaining. The **Anheuser-Busch** opinion held the restraint unlawful on this ground:

" 'Under the terms as above sought to be imposed by the Union, persons employed by or seeking to work for the above construction contractors in moving, erecting or installing machinery in St. Louis area breweries would be compelled to forego representation by their present bargaining agent, the Millwrights' Union . . . and become affiliated with the Machinists' Union in order to retain their employment with such contractors . . . '

"**Where the underlying issue is made to turn on balancing the interests of employers, employees, and unions in organization or collective bargaining, the states should be no more free to apply antitrust laws than statutes or court decisions avowedly based upon those considerations.**" (Emphasis ours.)

We must remember that the essential interest, purpose and object in this case is to further the advantage of the Machinists. This is so whether we attribute this to selfish ends or otherwise. If the end sought constitutes an unfair labor practice by employees under Section 8 (b) of the

Act then we say its regulation is exclusively under federal power. However, it is sure that petitioners' object was **not to restrain trade in the true sense in which "restraint of trade" is considered.** The evidence reveals no actual restraint, let alone any substantial restraint which the law requires to be shown in any case involving this doctrine. (See U. S. v. Hutcheson, 312 U. S. 219.) We respectfully assert that to permit the present evasive tactics employed by the Missouri Court in reaching its decision that the activity in question was not and is not a labor dispute, is to indulge in pure fiction and empty "legal labels." This is emphasized when the Missouri court held (R. p. 112) that the picketing was effected by an "agreement and combination in restraint of trade" and that this "combination" constituted a "local transportation" combination. Of course, the Machinists have no "transportation monopoly" in any fair sense of the term, nor was there **any** evidence of any such a "combination" nor of any restraint of trade.

So we say the Missouri Court has deliberately sought to invade the pre-empted field over which Congress has given the National Labor Relations Board exclusive jurisdiction either because the concerted activity of the petitioners is protected under Section 7 of the Act or because it is proscribed under other sections. [Sec. 8 (b).]

Without pursuing this point further, for our purpose here, we contend that this Court's conclusion in the Garner case, as stated at **346 U. S. 485, l. c. 501,** is controlling, and the Supreme Court of Missouri is entirely in error in brushing it aside and ignoring it, and in failing to accord it the controlling application for which we maintain. This Court stated (Garner case, l. c. 501):

> "We conclude on the basis of the allegations, the petitioners could have presented this grievance to the National Labor Relations Board. The respondents

were subject to be summoned before that body to justify their conduct. We think the grievance was not subject to litigation in the tribunals of the State."

This is so, we repeat, regardless of **any** state law, restraint of trade or otherwise, it is alleged that petitioners **also** may have violated. The purpose of Congress to give to the N. L. R. B. exclusive, primary jurisdiction cannot be negated or emasculated by procedure as is sought to be imposed by Missouri. Nor can the Missouri Court hold, by its unsupported conclusion, that there is no labor dispute. To do so, we maintain, flies in the face of reason, and every realistic concept of a labor dispute.[4]

Section 2, par. 9, of the N. L. R. A. as amended [U. S. C. A., Title 29, Sec. 152 (9)] defines a "labor dispute" as:

> ". . . **any controversy** concerning terms, tenure, **or conditions of employment** or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange **terms or conditions of employment** . . ." (Emphasis ours.)

This is also essentially the definition of the term to be found in the Norris-LaGuardia Act [U. S. C. A., Title 29, Sec. 113 (c)].

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[4] The following cases support our contention herein expressed and we believe are in point on the subject:

International Rice Mill Co. v. N. L. R. B., 341 U. S. 665, 71 Sup. Ct. 961, 95 L. Ed. 1277;

Rice v. Santa Fe Elev. Corp., 331 U. S. 218, 91 L. Ed. 1447, 67 S. C. 1146;

Direct Transit Lines v. Local Union, etc., 199 Fed. 2d 89 (6th Cir.) (also on second motion to remand, U. S. Dist. Ct., West Dist. of Mich., 22 Lab. Cases, C. C. H., par. 67072, p. 81947).

Capital Service, Inc., v. N. L. R. B., 204 Fed. 2d 848 (9th Cir.), 347 U. S. 501, 98 L. Ed. 594;

California Assoc. of Employers v. Building and Construction Trades Council, 178 Fed. 2d 175 (9th Cir.);

Amalgamated Assoc. of Motor Coach Employees v. Dixie Motor Coach Corp., 170 Fed. 2d 902 (8th Cir.).

As a matter of fact, as we have stated, the N. L. R. B., in its ruling (101 N. L. R. B., p. 346, No. 87) on the respondent's unfair labor practice charge, held there was no **present** dispute as to the assignment of work. Factually the Board did not rule there was no "labor dispute" as the Missouri Court would have it appear, and as that term is understood between employees and employer, and as defined in the Act.

This Court has had a phase of the instant case before it in U. S. v. Hutcheson et al. (1941), 312 U. S. 219. This was a criminal proceeding wherein the defendant, Hutcheson, president of the Carpenter's Union, was indicted for violation of the Sherman Anti-trust Act on facts arising out of the very same jurisdictional dispute which respondent alleges in the case at bar, namely, the Millwrights (Carpenters) and the International Association of Machinists, the petitioners herein.

This Court held that a jurisdictional dispute was involved and that under the Clayton Act and the Norris-LaGuardia Act the congressional will and national policy withdrew the dispute from injunctive relief processes and since this cannot be done neither can the conduct thus protected **be made the subject of a criminal proceeding**. We argue this court in the Hutcheson case, in principle, found that the instant subject or object **to be a labor dispute** to be dealt with under law pertaining to labor disputes. At l. c. 232, Mr. Justice Frankfurter, speaking for the Court, said:

> "In so far as the Clayton Act is concerned we must therefore dispose of this case as though we had before us precisely the same conduct on the part of the defendants in pressing claims against Anheuser-Busch for increased wages, or shorter hours, or other elements of what are called working conditions. The fact that what was done was done in a competition

for jobs against the Machinists rather than against, let us say, a company union is a differentiation which Congress has not put into the federal legislation and which therefore we cannot write into it."

This Court further observed at, l. c. 234:

"Congress in the Norris-LaGuardia Act has expressed the public policy of the United States and defined its conception of a 'labor dispute' in terms that no longer leave room for doubt. Milk Wagon Drivers' Union v. Lake Valley Farm Products, Inc., 311 U. S. 91 (7 LRRM 276) * * * Such a dispute, Sec. 13 (c) provides, 'includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee' (Note No. 4).

Note No. 4—' Three years later, in the National Labor Relations Act, Congress gave similar breadth to the definition of a labor dispute. Act of July 5, 1935, 49 Stat. 448, 450, 29 U. S. C., Sec. 152 (9)."

It is clear therefore that this court in 1941 recognized that the instant dispute was in reality a labor dispute and as such involved a controversy over "terms and conditions of employment."

This is our contention at bar and this being so the determination of whether the dispute is protected under Sec. 7 of the Act or is proscribed under Sec. 8 (b) of the Act is for the exclusive competence of the National Board. This is what this court has repeatedly held and particularly in the Garner case, supra. It should be remembered that even so there was no "labor dispute" in the Garner case as stated by the court in its opinion.

2. (a) **The Supreme Court of Missouri Erred in Entertaining Jurisdiction Because a State Court Has No Jurisdiction and Is Without Authority to Enjoin a Union on Charges Which Relate to Matters Protected or Proscribed by the N. L. R. A., as Amended, and by the L. M. R. A. (1947) at the Request of an Employer in Interstate Commerce, and Such Employer Has No Rights With Respect to Such Conduct, Other Than Those Which Are Justiciable Under the Act.**

(b) **The Language of the Federal Act and Its Legislative History Exclude Action in This Case in a State Tribunal.**

(c) **The Clear and Unmistakable Policy of Congress, as Declared in Sections 7, 13, 10 (a), 10 (j), 10 (k), 10 (l), of the N. L. R. A., as Amended, U. S. C. Title 29, Par. 141 et seq., and Sec. 303 (a) (4) of the L. M. R. A. (1947), Give to the N. L. R. B. the Power to Enforce Any Provision of the Act and This Power " . . . Is Not Effected by Any Other Means of Adjustment or Prevention That Has Been Given or May Be Established by Law or Agreement . . .," Sec. 10 (a).**

(d) **The Facts in This Case Unequivocally Place It Within the Ambit of the Federal Law.**

At this point it may be well to consider the national policy with respect to labor relations in interstate commerce, as declared by Congress, to demonstrate that this policy, and its legislative history, fully supports the contention of petitioners in this case, and to show why the principle of the Garner case applies at bar.

This Court is familiar with the long asserted abuses in the issuing of injunctions in labor cases by both Federal and State courts. It was because of this that Congress passed the Norris-LaGuardia Act in 1934.

The chief, in fact the only, weapon a labor union has to obtain its demands is through the concerted activities of striking and picketing. This weapon has been the constant subject of state attack and limitation. American labor history reveals a sad picture of the abuse of labor injunctions, not infrequently granted, "ex parte"! Mr. Justice Jackson, for the Court, in **International Union, etc., v. W. E. R. B.**, 336 U. S. 245, l. c. 257, stated:

> ". . . The most effective weapon against the struggling labor union was the doctrine that concerted activities were conspiracies and for that reason illegal."

Congress, of course, had this abuse in mind and recognized how easy it was, one way or another, to return to this philosophy of government by injunction. It recognized how a narrow and restricted interpretation of the "purposes or objects" of picketing, or definitions of a "labor dispute" could again, all too easily, open the closed door of the national policy if the views and philosophies of the forty-eight states were permitted to encroach upon the national field in interstate commerce. Hence the declaration by Congress of its clear policy **that labor relations in industries affecting interstate commerce were to be solely regulated and controlled by the Federal Act,** which principle and policy this Court has consistently guarded and affirmed (Garner, Bethlehem, etc., cases, cited, supra).

Yet Missouri has asserted that it has the first and primary right to pass on and determine:

> (a) whether the **object** or **purpose** of the strike and consequent picketing is lawful;
>
> (b) in accordance with its finding to apply its "restraint of trade" or conspiracy statute as supreme, taking precedence over all federal regulations, machinery and Boards.

We repeat this is contrary to the principle frequently determined by this Court and especially in the Garner case, when it said, 346 U. S. 485, l. c. 501:

> "We think the grievance was not subject to litigation in the tribunals of the State."

Consequently, in 1935 when Congress passed the N. L. R. A. (Title 29, Secs. 141-168, C. 372, 49 Stat. 449) in unmistakable terms it evidenced its purpose of entering the field of labor relations in interstate commerce. Section I of the Act (1935) sets forth the purposes. After discussing the general background, Congress states (last par., Sec 1, U. S. C. A., Sec. 151):

> "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce, and to mitigate and eliminate these obstructions where they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

The above purpose was carried forward and reiterated by the passage of the L. M. R. A., 1947 (U. S. C., Title 29, Sections 141-187, C. 120), where under the designation "Short Title and Declaration of Policy," Sec. 1, the Congressional intent and purpose was again stated as [Sec. 1 (b)]:

> "It is the purpose and policy of this Act . . . to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other . . .".

In other words, Congress intended one national policy to be determined and controlled by one national Board instead of permitting forty-eight different and independent interpretations by the respective states. This is buttressed by the Norris-LaGuardia Act, 29 U. S. C. 101-115). The legislative history of the N. L. R. A., as amended, and the L. M. R. A. (1947) reveal this purpose.

Let us here further consider the legislative history of the Act as it pertains to the immediate subjects of this discussion, namely, the **exclusive jurisdiction** of the Board in disputes in industries affecting interstate commerce and the subject of **"jurisdictional disputes"** and boycotts being unfair labor practices.[5]

We find that this **exclusive** jurisdiction of the Board, in the field of alleged unfair labor practices particularly, is repeatedly revealed. The House Report No. 245, p. 331, Legislative History of the N. L. R. A., as complied by the N. L. R. B., states:

> "As under the present Act, the power of the Board under the amended Act **in the matter of unfair labor practices is exclusive**. . . . The rule of exclusive jurisdiction was developed many years ago by the Supreme Court in order to provide uniformity in matters of national policy under the commerce clause." (Emphasis ours.)

An exception was made as to the union security provision of the "closed shop" in Sec. 13 of the House Bill

Because of the fact that authority was given to the Board by Sections 10 (j) and 10 (l) to seek injunctive relief, and by Section 303 (b) of the L. M. R. A. (1947), permitting aggrieved parties to file actions in damages, the Senate felt that the continuation of the word "exclu-

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[5] See Appendix B hereof.

sive" as it appeared in the original Act (1935) might be confusing and should be deleted. However, this in no way changed the intent and meaning of the Act as to the sole jurisdiction of the Board in that area wherein the Board had positive competence and power, such as unfair labor practices.

The Court will find an accurate and clear explanation of this phase in **Amazon Cotton Mill Company v. Textile Workers' Union etc.**, 167 Fed. 2nd 183, where the Fourth Circuit had the question before it and where this Court denied certiorari.[6]

The certain intent and purpose of Congress as we have demonstrated was to pre-empt the field of labor relations in industries affecting interstate commerce and to give to the N. L. R. B. exclusive, primary jurisdiction to hear and determine all conduct denominated as unfair labor practices under Sec. 8 (b) of the Act as amended and Sec. 303 (a) of the L. M. R. A. (1947).

As the instant record shows respondent has specifically alleged certain such unfair labor practices and particularly a jurisdictional dispute and boycott under Sec. 8 (b) (4) (D) of the Act as amended and Sec. 303 (a) (4), L. M. R. A. (1947). This very same jurisdictional dispute between the Machinists and the Millwrights was the example used and discussed by Congress at the time the foregoing word "exclusive" was deleted (see Appendix B).

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[6] In the above case the Fourth Circuit, speaking through Chief Judge Parker, had before it this very question as to the exclusiveness of the Board's jurisdiction being affected by the deletion of the word "exclusive" in the amended Act.

The Court, at l. c. 187, fully examined the reasons for the omission of the word "exclusive" and concluded: ". . . that it was not intended to vest and does not vest jurisdiction in the District Courts in cases of this sort." Of course the same reasoning applies with respect to any court, state or otherwise. The exclusive jurisdiction of the Board to utilize the machinery afforded it by Congress and to enforce the regulations laid down and proscribed by the Act is the point involved.

Senator Taft discussed the basic question of the right to strike (93 Congressional Rec. 3835 [1947]):

> "So far as the bill is concerned we have proceeded on the theory that there is a right to strike and that labor peace must be based on free collective bargaining. We have done nothing to outlaw strikes for basic wages, hours and working conditions after proper opportunity for mediation."

In other words, Congress has recognized and given employees through their representatives the right to strike and act concertedly for wages, hours, **terms and conditions of employment**. In the instant case the petitioners assert the right to exercise this privilege in support of their demand for **certain conditions of employment**, as revealed by their demand on respondent to **continue** a certain clause in the contract under negotiation (Clause 2, Art. VII, supra). Yet Missouri would interfere and by its determination hold that there is no lawful **purpose or object** under its law, and thus preclude the Federal Board from exercising its exclusive and primary jurisdiction under the Federal Act of determining this question for itself.

An observation at this point is appropriate concerning the subject of working conditions. A "working condition" or "condition of employment" is not to be so narrowly construed as to destroy or defeat its implication. Certainly what is and what is not such a "condition" under the Federal law is not to be left to the varied definitions of the forty-eight states, as Missouri would seek to do.

"Conditions of employment" necessarily are many and varied. The reasonable relationship of the terms and conditions under which working men desire to work for an employer to their employment cannot be defined by any hard and fast rule. Hard and fast rules have no place in the area of human relationships such as employee and

employer. They must be not only flexible, but broad, if industrial peace is the chief object to be sought. The effort of men to protect their work or gain additional work, even at the expense of others, if peacefully sought, should never be narrowly condemned and removed from the scope of conference, discussion and negotiations, as Missouri would seek to do contrary, we say, to the Federal policy.

The Seventh Circuit in **Inland Steel Company v. N. L. R. B.**, 170 Fed. 2d 247, discussed "conditions of employment."[7] In this case a pension and retirement plan by the company, voluntarily inaugarated by the company, was the question. Also see **Amazon Cotton Mill Co. v. Textile Workers Union etc.**, 167 Fed. 2nd 183, wherein "conditions of employment" are likewise discussed. In the Amazon case a pension and retirement plan was also involved.

In this connection it must be remembered that Congress has taken over **the field of** labor relations in interstate commerce. This means the **entire area** of such relations, not just a segment or part. Unless Congress has specifically exempted a particular part of this field, or has remained silent on the subject, or has ceded it to state control, the states are excluded and so the cases hold.

Where the public peace and order of a state are transgressed by violence, mass picketing and related conduct, then the traditional right of a state to protect itself under its police power, from such breaches, are and always have been recognized as proper areas of state regulation and control. The instant case does not by any means fall in this restricted area.

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[7] The Inland Steel case involved the refusal of the Company to bargain on the subject of its own, voluntary pension and retirement plan, on the ground ". . . that it is not required to do so under the terms of the Act. It follows then that the issue for decision is—whether pension and retirement plans are part of the subject matter of compulsory collective bargaining within the meaning of the Act."

Congress has not remained silent in the instant area but has specifically ". . . taken in hand this particular type of grievance . . ." (Garner case). Congress has specifically enumerated certain conduct of employees as unfair labor practices under Section 8 (b) of the Act. Respondent alleges the conduct of petitioners herein as violative of those provisions of the Act (R. pp. 3, 6, 7, 8, Pars. 3, 9, 10, 15, Resps. Compl.).

Therefore, when Congress entered this field and provided regulations, methods, machinery and Boards to effect the regulations, all state regulation and control was necessarily precluded and excluded. This is implicit in the Act. We repeat, Congress has pre-empted this field in interstate commerce. To permit state interference by one means or another, by pretext or strained and narrow processes of reasoning and construction, would be to emasculate the Federal Policy and destroy it as well as to do violence to the Federal supremacy provision of the United States Constitution, Article VI.

To sustain these principles this Court has repeatedly ruled in the cases we have set out, supra, i. e.:

Garner et al. v. Teamsters etc. Union et al.;
Building Trades Council et al. v. Kinard etc.;
Bethlehem Steel Co. v. N. Y. State Labor Board;
International Union etc. v. O'Brien et al.;
La Crosse Tel. Corp. v. W. E. R. B.;
Amalgamated Assoc. Motor Coach Employees etc. v. W. E. R. B.;
Hill v. Florida.

Of course the above list is not meant to be all inclusive. There are many more cases to the same effect. The foregoing, we believe, suffices our purpose here.

The **principle** announced in these cases is the exclusion from interference in the federal field. The **emphasis** is

directed **against the intrusion,** not the one who seeks it. A State, a State Labor Board or a State Court are all necessarily included in the prohibition.

This Court, in **Hill v. Florida,** 325 U. S. 538, l. c. 542, held:

> "The Board properly rejected the employers contention that Congress did not intend to subject the 'full freedom' of employees to the eroding process of 'varied and perhaps conflicting provisions of state enactments.' Cf. N. L. R. B. v. Hearst Publications, Inc., etc., 322 U. S. 111."

In Hill v. Florida it was the State of Florida which asserted the right to invade the Federal field by its enactment of a specific law seeking to license union business agents, etc.

In **Bethlehem Steel** it was a State Labor Board. This Court held, at 330 U. S. 767, l. c. 774:

> "But when federal administration has made comprehensive regulations effectively governing the subject matter of the statute, the Court has held that a state regulation in the field of the Statute is invalid even though the particular phases of the subject has not been taken up by the Federal agency. (Cases cited.)"

and at l. c. 776 the Court says:

> "The Federal Board has jurisdiction of the industry in which these employees are engaged and has asserted control of their labor relations in general. . . . We do not believe this leaves room for the operation of the state authority stated."

In **International Union, etc., v. O'Brien,** 339 U. S. 454, 44 L. Ed. 978, 70 S. C. 781, where the right to strike was involved, it was held, l. c. 459:

"Clearly, we reaffirm the principle that if 'Congress has protected the union conduct which the state has forbidden, the state legislation must yield.' That principle is controlling here."

At bar petitioners have consistently contended that Congress has—

(a) "protected" their conduct in exercising their right to strike and to peacefully picket respondent for the object and end sought or, likewise, that Congress has—

(b) proscribed petitioners' alleged conduct as an unfair labor practice (jurisdictional strike and boycott) under Sec. 8 (b) (4) (D) of the Act as amended, and Sec. 303 (a) (4) of the L. M. R. A. (1947) as alleged by respondent in its petition.

Hence, we argue that in either event the subject matter is within the area exclusively reserved for determination **in the first instance** by the Federal Board and that Missouri has no right or power to predetermine it.

"Congress has occupied this field and closed it to state regulations." O'Brien case, supra, 339 U. S. 454, l. c. 457.

The Garner case, supra, is completely determinative of petitioners' contention at bar. We repeat what we have previously stated:

"Congress has taken in hand this particular type of grievance when it affects interstate commerce" (346 U. S. 485, l. c. 488). ". . . The power and duty of primary decision lies with the Board, not with us. But it is clear that the Board was vested with power to entertain petitioner's grievance (at bar, respondent's) to issue its own complaint against respondents (at bar, petitioners) and, pending final hearing, to seek, from

the U. S. District Court, an injunction to prevent irreparable injury to petitioners (at bar respondents) while their case was being considered" (346 U. S., l. c. 489). (Parenthesis ours.)

It will be argued that the case of **Giboney et al. v. Empire Cold Storage & Ice Co.**, 336 U. S. 490, 69 S. C. 684, 93 L. Ed. 834, is in point here. **This we deny!** The Giboney case came to this Court on one single question, namely, did the Fourteenth Amendment of the Federal Constitution (Freedom of Speech) deprive Missouri of its right to hear and determine the issues **there** presented? This Court said "No." The facts on which the Giboney case was heard, admittedly occurred prior to the amended N. L. R. A. and the L. M. R. A. (1947), although the case was decided subsequently. The Union (The Teamsters) was seeking to unionize certain independent ice peddlers in Kansas City, Missouri, and to this end were seeking to prohibit Empire and other ice manufacturers from selling and furnishing ice to these peddlers and thus to compel these manufacturers to aid in the unionization of these peddlers. The Teamsters were enjoined by the state court from continuing this activity. The **single** issue presented to this Court and which this Court decided was, were petitioners' rights of free speech violated under the Fourteenth Amendment of the United States Constitution? **There was no question or issue involved or presented directly or indirectly challenging the jurisdiction or the right or power of Missouri to hear or determine the issues in the first instance.** There was no National Act even suggested. In fact, no provision of the N. L. R. A. applied!—or was involved. So we say, this case is without merit at bar where the sole question is one of primary jurisdiction under the Federal law and policy to hear and determine certain issues alleged by respondent to be unfair labor practices under the Federal law. In other words, the **same issues** as were determined by this Court in the Garner (and

Kinard) cases. Reference is here made to the observations by Prof. Cox, supra, concerning the Giboney case.[8]

Likewise respondent seeks to avail itself of the Laburnum case (United Construction Workers v. Laburnum, 347 U. S. 656, 98 L. Ed. 686, 74 S. C. 833). Let us briefly consider **the facts** in this case, because **the facts determine the relevancy of the language.** A union indulged in **conduct** which constituted a tort in Virginia against the corporation (plaintiff) there and the corporation brought a civil action for damages in the State Court of Virginia. This should be sufficient to absolutely distinguish the case. The field of tort actions for damages is not and was never intended or contemplated to be pre-empted by Congress. As we have argued, violence, mass picketing, etc., are areas in which the state has control and so in the matter of the commission of torts.

The foregoing principle was dealt with by this court in the Garner case, 74 S. C. 161, l. c. 164.

> ". . . Nor is this a case of mass picketing, threatening of employees, obstructing streets and highways, or picketing homes. We have held that the state still may exercise 'its historic powers over such traditionally local matters as public safety and order and the use of streets and highways.' **Allen-Bradley Local v. Wisconsin Board,** 315 U. S. 740, 749. Nothing suggests that the activity enjoined threatened a prob-

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[8] "(Note 128, l. c. 1330, Harvard Law Review article, supra), 265 S. W. 2nd, at 328. *Other aspects* of the opinion (the Missouri Court's opinion in the instant case) *are quite unsatisfactory.* The heavy reliance on Giboney v. Empire Storage and Ice Co., 336 U. S. 490 (1949), is unwarranted because the question of federal preemption was not before the Court. The statement that the pending case did not involve a labor dispute under the Norris-LaGuardia Act is contrary to the federal decisions. See Yoert Brewing Co. v. Brennan, 59 F. Supp. 625 (D. Minn., 1945), where prior cases are collected." (Emphasis and parentheses ours.)

able breach of the state's peace or would call for extraordinary police measures by state or city authority. Nor is there any suggestion that respondents' plea of federal jurisdiction and preemption was frivolous and dilatory, or that the Federal Board would decline to exercise its powers once its jurisdiction was invoked."

The law of torts lays hold of the actor's conduct without regard to its context or purpose. In other words there is a sound distinction between the object or purposes of concerted action and the conduct of the parties. In the former this court has consistently held that these objects and purposes are within the pre-empted field wherein the Federal Board has exclusive jurisdiction. In the latter instance, the conduct of the parties constitutes a field wherein the states, as in the Laburnum case, may exercise control.[9]

3. To Permit the Jurisdiction of Missouri Under the Facts Is to Permit the Eroding Away of Federal Authority and the Destruction of the Clear Congressional Purpose of Exclusive Jurisdiction in the N. L. R. B.

It seems to us that the mere statement of the foregoing, especially after our previous discussion, should be sufficient to justify its assertion. We have fully demonstrated, we think, the exclusive character of the jurisdiction, power

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[9] Cox, Harvard Law Rev., Vol. 67, No. 8, pp. 1332-33:

"Violence, mass picketing and the destruction of tangible property are unlawful regardless of the existence of a labor dispute. State courts should be free to deal with them under general laws relating to the protection of persons and property and to grant preventive relief in accordance with the normal principles of equity even to the extent of enjoining peaceful picketing enmeshed in a context of violence. The principle furnishes a sound basis for deciding United Const. Workers v. Laburnum, etc., now pending in the Supreme Court on a Writ of Certiorari." (The Laburnum case has since been decided in keeping with these views.)

and right of the N. L. R. B. in matters such as are involved in this case. The respondent has alleged those powers and has invoked them. Respondent itself has built the fence encompassing and defining the controversy and within the limit of this field respondent must be held. The questions of boycott, jurisdictional dispute, forced work assignment, etc., raised by respondent are within the sole and exclusive competence of the N. L. R. B. to hear and decide in the first instance, exclusive of any state tribunal.

The grievances alleged are in the field of labor relations in interstate commerce, as this Court has said in the Garner case (supra). If this be so then neither Missouri, nor any state, can be permitted to erode away and destroy the Federal law. If Missouri can do what it here seeks to do for the self-asserted reasons it advances, then any state can do the same and the wording, intent and purpose of the Federal Act would be emasculated. The states would determine their own power, jurisdiction and rights in the face of the Congressional purpose and in the teeth of the Constitutional power. As this Court said in Hill v. Florida (supra), "What Congress constitutionally has given the states cannot constitutionally take away."

4. A Conflict of Laws Exists and the Federal Law Is Supreme Under Article VI of the Constitution of the United States.

Assuming, for argument's sake, respondent's position to be correct, then, concerning the issues here involved, there is a definite conflict of laws, to-wit:

(a) The N. L. R. A., as alleged, and

(b) The Missouri Restraint of Trade Statute.

The answer then becomes simple, needing no prolonged argument or citation to support it, the Federal law is

supreme and must prevail. (U. S. Constitution, Article VI.)[10]

At bar we have a national brewing company, Anheuser-Busch, Inc., admittedly in interstate commerce (R. p. 22), being picketed by petitioners whose right to bargain with the employer is assured by a certification of the N. L. R. B. These petitioners were enjoined by a state court because they sought to attain an object which the N. L. R. B. later found not to be actionable under provisions of the N. L. R. A. (101 N. L. R. B., No. 87).

This court is then presented with the problem, is this clause which the petitioners wanted **retained in the contract,** one which is legal under the N. L. R. A., or is it actionable as an unfair labor practice under the N. L. R. A.

As this court stated in the Garner case, supra, l. c. 499,

> "The Federal Board, if it should find a violation of the N. L. R. B., would issue a cease or desist order and perhaps obtain a temporary injunction to preserve the status quo. **Or if it found no violation, it would dismiss the complaint, thereby sanctioning the picketing.**" (Emphasis ours.)

This applies here. The N. L. R. B. had to determine whether or not this action by petitioners was an unfair labor practice or whether it fell within the protected rights of the petitioners for which they are entitled to bargain under Sec. 7 of the N. L. R. A. It is our opinion, supported by the above statement of this court, that if

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[10] Article VI of the United States Constitution, paragraph 2, is as follows:

> "Supreme Law of the Land. This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

an action is not specifically proscribed presumably it is sanctioned and protected under Section 7 of the Act. This is made clear by this Court in Garner et al., supra, when it continues at, l. c. 499:

> "The detailed prescription of a procedure for restraint of specified types of picketing would seem to imply that other picketing is to be free of other methods and sources of restraint, for the policy of the L. M. R. A., is not to condemn all picketing but only that ascertained by its prescribed process to fall within its prohibitions. Otherwise, it is implicit in the Act that the public interest is served by **freedom of labor to use the weapon of picketing**. For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare picketing free for purposes or by methods which the federal act prohibits." (Emphasis ours.)

This of course is our point. For an industry in interstate commerce, the federal act must apply. It is supreme if the proper tribunal, the N. L. R. B. determines there is no violation under Sec. 8 (b) (4) (D), then by implication it must be protected under Sec. 7. Congress could not have intended to leave conduct falling within its jurisdiction to regulate, unregulated.

This Court in International Union of Auto Workers, CIO, et al. v. O'Brien, 339 U. S. 454, 70 S. Ct. 78, at l. c. 456, stated:

> "Congress has not been silent on the subject of strikes in interstate commerce. (* * * citing sections of NLRA.) None of these sections can be read as permitting concurrent state regulation of peaceful strikes for higher wages. Congress occupied this field and closed it to state regulation."

In **General Comm. v. M. K. & T.**, 320 U. S. 323, l. c. 336, this Court said:

> "When Congress came to the question of jurisdictional disputes, it chose **not to leave** their solution to the courts." (Emphasis ours.)

This, of course, is reasonable, or why all the elaborate machinery of the NLRB, a Board especially skilled in handling just such matters.

The exact fact situation that existed in International Union of Auto Workers et al. v. O'Brien, supra, exists here, namely, whether a state quasi-criminal statute has authority over a Federal labor law. This Court decided the state's authority is subservient. In **I. L. U. v. Sunset Line & Twine Co.**, 77 Fed. Supp. 119, the Court there in re injunctive relief sought by the plaintiff, said:

> "The legislative history of the Act (L. M. R. A.) demonstrates that Congress did not enlarge the rights of private litigants. Although jurisdictional strikes and secondary boycotts were made independently unlawful in Section 303 of the Act, and persons injured thereby were accorded a right to sue for damages in the district courts, nevertheless, it is clear that Congress did not intend either by express or by necessary implication, that private parties should have a right to injunctive relief even as an ancillary remedy in the permitted suit for damages."

For the sake of argument let it be said that the State Court, under State law, has the right of granting injunctive relief in furtherance of enforcing violation of Federal law. Then the question is, have defendants violated the Federal law? The best answer to that is that the proper tribunal, the N. L. R. B., in 101 NLRB No. 87 (or CCH, Par. 11,959, Anheuser-Busch v. Dis. No. 9, IAM) held in this specific case, with these same parties and these same facts,

that defendants herein did not violate the provisions of the Federal law. Also see:

In re: Teamsters, Local 807, v. Schultz Refrigeration Service, 87 NLRB No. 82;
Local 813 v. Ryan Construction Co., 85 NLRB 417;
International Rice Milling Co. v. NLRB, 341 U. S. 665, 71 S. Ct. 961.

It is clear then that the State Courts of Missouri have not properly applied the Federal law to these facts. They should have dismissed respondent's petition under Article VI of the United States Constitution as a simple conflict of laws case.

CONCLUSION.

So we present "The Question":

The question presented is whether the State Court of Missouri, under the facts in this case, has the competence to assume jurisdiction in a labor dispute in an industry affecting interstate commerce, where such jurisdiction is in conflict with and intrudes upon the national labor relations policy and statutory scheme.

Under the "Statement of the Case" Part V hereof, we have set forth the factual background of the question here presented, which, we believe, justifies our answer of "No" to this question.

The Federal law is both an unequivocal and comprehensive assertion of power by Congress to regulate the relations of the parties to this action. This is true whether:

(a) Viewed in the light of petitioner's assertions that they are engaged in lawful concerted activities to achieve their lawful purpose, or

(b) From the viewpoint of the Supreme Court of Missouri that petitioner seeks, by reason of a juris-

dictional dispute, and boycott, to compel respondent to violate the Restraint of Trade (Conspiracy) Statute of Missouri.

In either event the issues fall squarely within the regulatory power of Congress.

The point at which the Missouri Court erred, it seems to us, is in holding:

(a) There is no labor dispute, and

(b) There is no unfair labor practice, because the N. L. R. B. said so! (R. p. 105.)

This is patently wrong and is not the determinative factor. This case, with its allegations of violation of the Federal law, was filed in April, 1952. On April 19, 1952, when respondent obtained its "ex parte" restraining order and injunction, there was no mention or pleading of any Missouri Restraint of Trade Statute! The case was heard in June, 1952, by the State Court over the petitioner's objections that there was no jurisdiction in the State Court and it was determined in October, 1952, by making the "ex parte" restraining order and temporary injunction of the State Court permanent.

After the jurisdiction was thus fully usurped, the incongruous position is now asserted that since it is alleged the N. L. R. B. **in November, 1952** (101 N. L. R. B., p. 346, No. 87), **months later**, held that there was no dispute and no unfair labor practice, **this can be applied retroactively** to justify the wrongful assumption of jurisdiction by Missouri **in April-June, 1952.** This is unbelievable logic and reasoning. We repeat, the N. L. R. B. had original, primary and exclusive jurisdiction, under the law and the facts in this case, as respondent by its actions and conduct has admitted. **The Board's decision did not give it or deprive it of jurisdiction.**

Respondent asserts that the instant subject is not a proper one for negotiation; that it is not related to a "condition of employment"; that it is unlawful; that it seeks to coerce or compel respondent to violate the Missouri Restraint of Trade Statute; that in reality it represents a jurisdictional dispute between the petitioner (Machinists) and the Millwrights (Carpenters).

Hence the issue is sharply presented—is the subject sought a proper one for negotiation as a "condition of employment" under the Federal law? If it is, as petitioner alleges, and as it has demonstrated, supra, then certainly no one can be heard to complain and no injunction can issue. **Who is to determine and answer this question?** The Federal agency or the State Court?

Under the facts and the pleadings in this case the answer is clear. The Federal law, machinery and regulations must be applied in the first instance. To argue to the contrary is to argue for the complete impotency of the Federal law and regulations because we have here an industry admittedly engaged in interstate commerce over whose labor relations the Federal law has taken direct jurisdiction. The Federal jurisdiction is primary and exclusive as this Court has repeatedly ruled as we have fully shown.

Therefore, if the sought object is determined by the Federal procedure to be a proper one for negotiation, then Missouri must yield to the dominant and supreme law. If the sought object is determined under the Federal procedures to be an improper one, then the N. L. R. B. has power to order these petitioners to cease and desist and it is afforded injunctive facilities under the Act to protect the parties.

Petitioners argue that when Missouri injected its laws and regulations, and determined for itself the lawfulness

or unlawfulness of the conduct in question, it violated the controlling authority of the Garner and the many other Federal cases we have cited.

Federal power and authority should not be subjected to the ingenuous attacks of the states in determining in the first instance whether or not a guaranteed federal right is being exercised for a proper purpose or object. To permit a state to first determine this question for itself would be to destroy the federal power and would do effective violence to any concept of federal pre-emption or power in this field. It would render Sections 8 (b) (4); 10 (a) (j) (k) (l), N. L. R. A., as amended, and Section 303 (a) of the L. M. R. A., 1947, impotent. These sections in particular afford respondent its exclusive remedy.

The holding and ruling of this Court in the Garner case, supra, is completely controlling and decisive here.

Your petitioners respectfully assert that for the reasons herein set forth, and in keeping with the decisions of this Court, the judgment of the Supreme Court of Missouri should be reversed.

Respectfully submitted,

LLOYD WEBER et al.,
By PLATO E. PAPPS,
Machinists Building,
Washington 1, D. C.,
ROBERT A. ROESSEL,
818 Olive Street,
St. Louis 1, Missouri,
Counsel for Petitioners.

Of Counsel:
ROESSEL, BOXDORFER & BROWNELL,
818 Olive Street,
St. Louis 1, Missouri.

APPENDIX A.

The following are the various pertinent sections of the N. L. R. A., as amended, and the L. M. R. A. (1947) (U. S. C., Title 29, Secs. 141-187, c. 120):

Statement of Policy.

Section 1 (b) (U. S. C., Sec. 141). Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

TITLE I.

Amendments.

Sec. 101; Findings and Policies.

(Last Par. U. S. C., Sec. 151.)

Section 1. * * *

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS.

"Section 2 (U. S. C., Sec. 152). When used in this Act—

Labor Dispute.

"(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

Rights of Employees.

"Section 7 (U. S. C., Sec. 157). Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representa-

tives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

Union Unfair Labor Practices.

"Section 8 (b) [U. S. C., Sec. 158 (b) 4, 4-A, 4-B, 4-D]. It shall be an unfair labor practice for a labor organization or its agents—

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is:

"4 (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

"4 (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9;

"4 (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to

conform to an order or certification of the Board determining the bargaining representative for employees performing such work: Provided, that nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act'';

TITLE III.

Suits by and Against Labor Organizations, Boycotts and Other Unlawful Combinations.

[U. S. C., Sec. 303 (a), 1, 2, 4; U. S. C., Sec. 187 (a), 1, 2, 4.]

Section 303 (a). It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or other self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative

of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

TITLE I.

Exclusive Right of Majority Representative.

"Section 9 (a). [U. S. C., Sec. 159 (a).] Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, that any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agree-

ment then in effect; Provided further, that the bargaining representative has been given opportunity to be present at such adjustment."

PREVENTION OF UNFAIR LABOR PRACTICES.

Power of Board.

"Section 10 (a). [U. S. C., Sec. 160 (a).] The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise; Provided, that the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith."

Power of Board to Petition Courts for Temporary Injunctions.

"Section 10 (j). [U. S. C., Sec. 160 (j).] The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate

temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper."

Determination of Jurisdictional Disputes by Board.

"Section 10 (k). [U. S. C., Sec. 160 (k).] Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 8 (b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed."

Duty of Board to Seek Injunctive Relief Against Certain Strikes and Boycotts.

"Section 10 (l). [U. S. C., Sec. 160 (l).] Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within

any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: **Provided, further,** That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: **Provided further,** That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D)."

APPENDIX B.

Pertinent References as to Legislative History of the Act and Jurisdictional Strikes. (Footnote 4.)

93 Cong. Rec. 3329; Cong. Rec. Senate 4/9/47; p. 995, Legislative History, published by the N. L. R. B.; **Senator Lucas** read into the Record a letter from Griesedieck Western Brewing Company touching directly on this dispute. The following are the pertinent excerpts:

"February 3, 1947.

"Hon. Scott Lucas
United States Senate
Washington, D. C.

Dear Mr. Lucas:

We have had a jurisdictional dispute for the past 3 weeks at our new bottling plant (Belleville, Illinois), . . . (Sets forth parties to dispute, i. e., The Machinists and the Millwrights.)

". . . We would appreciate it very much if you would telegraph or write the following: Mr. Harvey Brown, president, International Association of Machinists, Machinists Building, Washington, D. C.; Mr. William Hutchenson, president, Brotherhood of Journeymen Carpenters & Joiners, Indianapolis, Indiana . . ."

Letters were written by Sen. Lucas to each of the above parties:

"It has come to my attention that there is a jurisdictional dispute over the erection of bottling machinery in the Griesedieck Western Brewing Company of Belleville, Illinois. . . . I do not hesitate to say that the matter of jurisdictional disputes is one of the things that Congress will probably outlaw when new legislation is written . . ."

The above William Hutchenson is the same one involved in **U. S. v. Hutchenson,** 312 U. S. 219, l. c. 232, 234, and having to do with the instant dispute between the parties at bar.

Note that this Court, in the Hutchinson case, pertinently observed that since the Norris-LaGuardia Act prohibited the issuance of injunctive relief in a controversy, jurisdictional or otherwise, and thus left the matter to negotiation, etc., that the same conduct thus permitted could not be the subject of criminal sanctions under the Sherman Anti-Trust Act.

This is what petitioner herein contends, subject to the amendments of the N. L. R. A. as they appear in Section 8 (b) (4) (D) of the amended Act.

These amendments make a jurisdictional dispute an unfair labor practice and hence within the sole jurisdiction of the N. L. R. B. to whom unfair labor practices have been exclusively awarded.

Senator Morse, 93 Cong. Rec. 1890-1; Cong. Rec. (Senate) 3/10/47, pp 950-954, Legislative History, published by the N. L. R. B., in discussing Sec. 8 (b) (4) (D), said:

> "I have attempted to define as unfair labor practices certain types of strikes, **jurisdictional disputes and secondary boycotts.** These provisions are in Sec. (4) (D) of the bill . . . " (Emphasis ours.)

Senator Taft, 93 Cong. Rec. 3954; Cong. Rec. (Senate) 4/23/47, p. 1012, Legislative History published by the N. L. R. B., states:

> "The fourth type of unfair labor practice is the ordinary jurisdictional dispute in which two unions compete for work on a particular job."

Senator Ellender, 93 Cong. Rec. 4255-6; Cong. Rec. (Senate) 4/28/47, pp. 1056-7-8 Legislative History published by the N. L. R B.

Senator Ball, 93 Cong. Rec. 2377; Cong. Rec (Senate) 5/13/47, p. 1524 Legislative History published by the N. L. R. B., Senator Ball stated:

> "The pending bill makes boycotts and strikes (jurisdictional) unfair labor practices, directs the N. L. R. B. to go into court and obtain injunctions stopping them and gives the injured parties the right to sue for damages actually sustained."

The legislative history of the Act is replete with testimony and declarations, of which the foregoing are but a few examples, of the Congressional intent and purpose to make jurisdictional disputes, as in the case at bar, unfair labor practices within the ambit of Federal regulation by the Act and within the sole jurisdiction of the N. L. R. B.